

ORIGINAL

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
MARK KAPITI,

PLAINTIFF,

-against-

Case No:  
07CV3782

RAYMOND W. KELLY, in his official capacity as  
Commissioner of the New York City Police  
Department, and The CITY OF NEW YORK,

DEFENDANTS.

-----X

DATE: May 29, 2008

TIME: 2:15 P.M.

EXAMINATION BEFORE TRIAL of a Witness,  
RITA BIENIEWICZ, taken by the Plaintiff,  
pursuant to Notice and to the Federal Rules of  
Civil Procedure, held at the offices of  
Corporation Counsel, 100 Church Street, New  
York, New York, before a Notary Public of the  
State of New York.

1 BIENIEWICZ

2 duration?

3 A. Yes.

4 Q. Do you recall if it was, in fact,  
5 late May or early June?

6 A. After reviewing the file, I don't  
7 recall. I can tell you what my notes revealed  
8 which led me to deduce that it was late May or  
9 early June.

10 Q. What was that?

11 A. A notation of the day it reached my  
12 bureau which is not in my handwriting. It's  
13 made by whoever takes it in that day from my  
14 bureau and my first notation on the action I  
15 took on the case which was dated June 5. I  
16 know it had to be between the late May date  
17 when it was assigned to my bureau and my first  
18 action.

19 Q. What was the first action you took  
20 in the case?

21 A. A conversation that I had with an  
22 officer.

23 Q. Who?

24 A. Over Triffon.

25 Q. When was that conversation?

1 BIENIEWICZ

2 A. My notation said June 5.

3 Q. What was the substance of that  
4 conversation?

5 A. It was regarding a Krimstock  
6 hearing.

7 Q. Have you ever done a Krimstock  
8 hearing?

9 A. No, I have not.

10 Q. Is that because you were never  
11 asked to or is it the practice of the District  
12 Attorney's office not to handle the Krimstock  
13 hearings?

14 MR. HAZEN: Objection to form.

15 Q. You can answer.

16 A. Can you rephrase the question?

17 Q. Do ADA's assigned to the case  
18 handle Krimstock hearings to your knowledge?

19 MR. HAZEN: Objection.

20 A. I don't know.

21 Q. Have you ever handled one?

22 A. No.

23 MR. HAZEN: Objection.

24 Q. Has anyone to your knowledge in the  
25 rackets bureau ever handled one?

1 BIENIEWICZ

2 MR. HAZEN: Objection.

3 A. I don't know.

4 Q. Do you know of any Assistant DA in  
5 Bronx county who has handled a Krimstock  
6 hearing?

7 MR. HAZEN: Objection.

8 A. I've never asked.

9 Q. Do you know of anyone?

10 A. No.

11 Q. What was the substance of your  
12 conversation with Officer Triffon?

13 A. I believe he was asking me if I was  
14 going to release the property and he was  
15 alerting me to the fact that there was a  
16 Krimstock hearing. As I had only gotten the  
17 case that week or a couple of days before I had  
18 no intention of seeing the car at that time.

19 Q. Did you call him or did he call  
20 you?

21 A. I couldn't say with certainty. I  
22 might have received a message and called him  
23 back. My notation didn't reveal who placed the  
24 actual phone call but initially he would have  
25 called me.

1 BIENIEWICZ

2 Q. Have you ever read Krimstock?

3 A. No.

4 Q. Do you know what takes place at a  
5 Krimstock hearing?

6 MR. HAZEN: Objection.

7 A. I believe the New York Police  
8 Department determines whether or not they are  
9 going to release a person who has been charged  
10 with a crime property that was seized. I  
11 believe it becomes relevant that the DA is  
12 going to release the evidence.

13 Q. What did you tell Officer Triffon  
14 if you recall?

15 A. What I said a moment ago. The sum  
16 and substance would have been that I didn't  
17 intend to release the car at that time.

18 Q. Why was that?

19 A. Because the car was allegedly used  
20 to transport fireworks. The case was new to my  
21 bureau and myself and at that time I hadn't  
22 made a determination as to whether or not it  
23 was still arrest evidence or investigatory  
24 evidence.

25 Q. How would it be arrest evidence?

1 BIENIEWICZ

2 A. If it was used to transport the  
3 car, I might have needed to take pictures of  
4 it. I might have needed it in my case to prove  
5 that the defendants took the stuff they were  
6 alleging from point A to point B in this  
7 vehicle.

8 Q. That's transporting that you are  
9 referring to?

10 A. Yes.

11 Q. Transporting from point A to point  
12 B?

13 A. Containing; transporting; holding.

14 Q. You would need to take photos of  
15 the car?

16 MR. HAZEN: Objection. That's not  
17 what the testimony was.

18 MR. KESSLER: It's a question.

19 Q. Would you need to take photos?

20 MR. HAZEN: In this case.

21 Q. In this case, I'm only talking  
22 about this case?

23 A. I have the option to take photos of  
24 the car as demonstrative evidence, logical  
25 evidence. At that time I hadn't decided yet